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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/815,881

03/31/2004

Montgomery M. Alger

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9066

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7590

06/15/2007

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EXAMINER

YOON, TAE H

ART UNIT

PAPER NUMBER

1714

MAIL DATE

DELIVERY MODE

06/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,881

Applicant(s)

ALGER ET AL.

Examiner

Tae H. Yoon

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-26 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-26 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 10, 12--17, 19, 25 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-46 of U.S.

Patent No. 6,908,964. Although the conflicting claims are not identical, they are not patentably distinct from each other because the first intimate blend of said patent meets the instant concentrate.

Applicant failed to submit a terminal disclaimer.

Claims 1, 3-7, 10, 12-17, 19, 25 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-46 of U.S. Patent No. 6,627,701. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because the first intimate blend of said patent meets the instant concentrate.

Applicant failed to submit a terminal disclaimer.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 12-14, 16, 17, 19, 20, 25 and 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laughner (US 5,270,386)

Rejection is maintained for reason of record with following response.

First, the instant method reciting "comprising" permits additional components and mixing steps.

Laughner (US'386) teaches PPE IV comprising a blend of PPE/nylon/styrenic polymer at col. 29, lines 11-13, and said styrenic polymer is taught as polystyrene at col. 10, lines 20-36. Said blend meets the instant concentrate since said nylon meets the instant additive. Melt mixing of said PPE IV with carbon black and a rubber modified

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polystyrene and/or impact modifier (SAN, Kraton and/or ABS 29), and furthermore with nylon is taught in tables II-VI. Also, notes that the recited third thermoplastic is an optional component since it is one of Markush group. A blend of PPE, polystyrene, block or grafted copolymer of polystyrene and polyamide, for example, meets the instant claim 6 since said block or grafted copolymer and polyamide inherently meet the instant impact modifier and additive 9 (absent further limitation to the additive), respectively.

Claims 1-10, 12-26 and 36 are rejected under 35 U.S.C. 103(a) as obvious over Laughner (US 5,262,476 or 5,270,386).

Rejection is maintained for reason of record with above (with respect to US'386) and following response.

Laughner (US'476) teaches the method of mixing a polyphenylene ether concentrate comprising PPE and polystyrene, rubber modified polystyrene and/or polyamide with other additives such as Kraton and carbon black in examples (tables II-VIII) and at col. 1, line 25 to col. 3, line 35. Dry blend and melt mixed concentrates are taught at col. 3, lines 13-24. Also, a polymer having a higher melting point among said other polymers would meet the instant additives such as nucleating agents and/or anti-drip agents. Laughner (US'476) also teaches employing additional polymers such as polyolefin at col. 2, line 40, and thus use of said polyolefin in making a polyphenylene ether concentrate would be a *prima facie* obviousness since said polyolefin can be added either in the concentrate or in the final composition..

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The instant invention further recites rubber impact modified polystyrene as the second and third thermoplastic, pelletized concentrate, blowing agent, polyolefin as a second polymer and other additives over Laughner. However, Laughner teaches employing rubber impact modified polystyrene in said concentrate at col. 1, line 30 and col. 10, line 50 to col. 11, line 11, and an additional impact modifier at col. 2, line 38. Blowing molding is taught at col. 3, lines 30-31, and thus use of a blowing agent is an obvious practice. Pelletized composition is taught at bottom of col. 28, and thus the pelletized concentrate would be an obvious practice since the word concentrate implies future use with other polymer(s), and thus easy storage and transportation would require pellets. Use of other additives is taught at col. 27, line 63 to col. 28, line 42, and thus employing said additives in polyphenylene ether concentrate would be obvious modification since said additives can be added either in the concentrate or in the final composition. Also, notes that the recited third thermoplastic is an optional component since it is one of Markush group. Laughner (US'386) teaches similar modifications.

Thus, it would have been obvious to one skilled in the art at the time of invention to modify the teaching of Laughner to obtain the instant invention as reason given above absent showing otherwise.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tae H Yoon
Primary Examiner
Art Unit 1714

THY/June 11, 2007